

## **The right to water in Peru and the criminalization of protest: human rights are not respected when facing the mining industry**

Resulting from the last five sessions<sup>1</sup> of the Human Rights Council, resolution A/RES/64/292, adopted by the General Assembly of the United Nations, recognizes the right to water and sanitation for all as a fundamental right, as does resolution A/HRC/RES/15/9 adopted by the Human Rights Council. However, despite the concerns expressed by the Committee on Economic, Social and Cultural Rights (§ 63-A/HRC/WG.6/14/PER/2) about the effects of the extractive industry on health and quality of water, the right to water is far from being a reality for everyone in Peru.

The mining industry with open pit mines threatens and contaminates aquifers with toxic chemicals and heavy metals, degrading the areas where water is sourced and damaging the environment.

The Yanacocha mining company, which owns the largest gold mine in America, located in Cajamarca (Peru), aims to develop the Conga project to extract gold and copper from the head of the water basin, an area considered to be a complex ecosystem of water renewal. This area consists of approximately forty lagoons, hundreds of acres of wetlands and grasslands that are the main source of water for the south of the region.

The Conga project plans in its initial stage to destroy four mountain lakes: two lakes will be used for the extraction of gold and copper, and two will be converted into dumps for their operational waste. The report by Robert E. Moran about the Environmental Impact Assessment of Conga shows that an average of 85,000 tons of toxic tailings is to be deposited in the mountains and river sources every day throughout the seventeen years of extraction. Hundreds of acres of wetlands would be destroyed and millions of cubic meters of water would be contaminated. Villagers living in these areas dedicate themselves mainly to agriculture and cattle rearing.

Despite this, Ollanta Humala in his television speech on 24<sup>th</sup> May, 2013 declared his support for the mining project and has issued a series of measures with the Supreme Decree No. 054-2013-PCM stating that investment in the mining sector must be accelerated and facilitated, declaring it of national interest at the expense of the protection of cultural and environmental heritage.

In September 2011, the government adopted the Law of Prior Consultation. On 3<sup>rd</sup> March, 2012 the Supreme Decree 001-2012-MC was established which restricts prior consultation to after the date of publication of the regulation, it also states that the projects that are considered of national interest should be carried out. Thus, the Conga mining project is exempt from the Consultation law. Despite the protests, the government is imposing its will.

The population of Cajamarca began protesting against the Conga project in November 2011; strikes, regional blockages, marches, rallies, and occupations of the Conga area followed. The government's response was to call a state of emergency several times and to violently repress the protests - causing serious injuries to many, such as the case of Elmer Campos who is now paralyzed for life.

Cajamarca was militarized by sending hundreds of troops for eight months straight. Five people<sup>2</sup> were killed by security forces during peaceful demonstrations. On 4<sup>th</sup> July, 2013, Marco Arana, renowned environmentalist, was brutally assaulted by police, also assaulted were the two lawyers who went to see him at the police station. He was released thanks to the national and international outcry.

<sup>1</sup> See the declarations A/HRC/24/NGO/10; A/HRC/23/NGO/4; A/HRC/22/NGO/31; A/HRC/21/NGO/77 and A/HRC/20/NGO/63

<sup>2</sup> Joselito Vásquez Jambo, José Eleuterio García Rojas, José Faustino Silva Sánchez, César Medina Aguilar (16 years old), José Antonio Sánchez Huamán

These facts directly violate the right to freedom of assembly, Article 20 of the Universal Declaration of Human Rights.

On 7<sup>th</sup> January, 2014, the Prosecution of Chiclayo, according to REGULATION 4 CASE 1914-2012, archived the case of those killed in Celendin - constituting a worrying precedent in the Peruvian justice as the murderers remain unpunished.

Additionally, Yanacocha is in the process of bringing the Chaupe family to trial - a family who are the rightful owners of land where the mining project would be carried out. Currently, the trial has been postponed due to a change of judge and should resume 10<sup>th</sup> March, 2014.

The two cases before the Inter-American Court of Human Rights - one concerning the criminalization of social protest and the agreements between mining companies and police filed by the Plataforma Interinstitucional Celendina (PIC) and Grufides, and the other for the case of Conga presented specifically by the Confederación Unitaria de las Rondas campesinas del Perú, are awaiting resolution.

For numerous months now, the ronderos (peasant patrolmen) have been intimidated and prosecuted in order to undermine the social base of the resistance as the ronderos are active participants in the resistance against the Conga mining project. In Celendin on 30<sup>th</sup> November, 2013, the government led a parallel congress of the rondas campesinas (organization of peasant patrols) which was rejected by the true rondas campesinas. The conference was a resounding failure. Manager of Environmental Affairs of the Presidency of the Council of Ministers, Vladimiro Huaroc said on 13<sup>th</sup> January 2014 in the newspaper La República that "we must restore order in Cajamarca because the rondas campesinas are in collusion with drug trafficking."

Furthermore, Anonymous Peru, who hacked the server of the Interior Ministry on 26<sup>th</sup> December 2013, brought to light an espionage operation against the political and environmental leaders of Cajamarca - a violation of human rights given that no person should be monitored without court approval.

Anonymous Peru also unveiled plans for the installation of police bases in the area. This constitutes a serious threat to the integrity of individuals as on 12<sup>th</sup> January, 2014 the government enacted Law 30151 which exempts the police and armed forces from criminal liability when using their weapons or other methods to cause injury or death while on duty.

On 16<sup>th</sup> January, 2014 thousands of people responded to the call of environmental organizations and gathered at the mountain lakes of Misacocha and El Perol, calling for the removal of the machinery of Yanacocha and expressing once again their profound opposition to the project. Infiltrators committed acts of vandalism such as setting fire to a guard's hut and toppling a transmitting antenna. The ronderos were accused by the tabloids (RPP, Peru 21, Canal N to date) as being responsible for these acts. The persecution of the rondas campesinas continues. The Special Operations Division of the National Police (DINOES), on site and at the service of the mine, fired shots into the air, fortunately without hurting anyone.

On 21<sup>st</sup> January, 2014 journalist César Estrada was charged for alleged theft and financial irregularities, a charge aimed to intimidate given the non-existence of evidence.

Both Minas Conga and Chadin 2 constitute projects that threaten the ecosystem and the right to water. They are costing lives, leaving many injured, others criminally charged and criminalizing the peaceful protest.

We call on the Human Rights Council to demand that the Peruvian State:

- ❖ Respect the fundamental economic, social and cultural rights of indigenous people, including their environmental rights;
- ❖ Respect the fundamental civil and political rights of indigenous people
- ❖ Respect the right of assembly, freedom of opinion and expression

- ❖ Respect the fundamental right to water and sanitation
- ❖ End the criminalization of protest and the military and police intervention
- ❖ Limit the use of force against peaceful demonstrations

Our organizations appeal:

- ❖ the Special Rapporteur on the rights of indigenous peoples
- ❖ the independent expert on the issue of human rights obligations related to the enjoyment of a clean, healthy, safe and sustainable environment
- ❖ the Special Rapporteur on the human right to water and sanitation,
- ❖ the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,
- ❖ the Special Rapporteur on the right to freedom of peaceful assembly and association,
- ❖ the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- ❖ and the Special Rapporteur on the situation of human rights defenders,

to direct their attention to the serious and persistent violations suffered by indigenous communities in Peru.

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Alta Amazonia Celendin, Asociación española para el derecho internacional de los derechos humanos (AEDIDH), Association of International Lawyers, El Frente de Defensa de los Intereses de la Provincia Hualgayoc-Bambamarca, Grufides, La Plataforma Interinstitucional de Celendin, NGOs without consultative status, also share the views expressed in this statement.